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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,439	09/22/2003	Ernesto Cohen	28,437-A	8312
7590	02/04/2005		EXAMINER	
Charles E. Temko 22 Marion Road Westport, CT 06880			NELSON JR, MILTON	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/666,439	COHEN, ERNESTO
Examiner	Art Unit	
Milton Nelson, Jr.	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 November 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 7 and 8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 7 and 8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 1, Applicant sets forth that the cover is for a "sofa and similar articles" The phrase "similar articles" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "and similar articles"), thereby rendering the scope of the claim unascertainable. Lines 3 to 4 of claim 7 are vague in that "said sofa" is set forth as including "a plurality of interconnected panels ... ", when it appears that the "sofa cover" is the structure that includes a plurality of interconnected panels" Clarification is required. In line 4 of claim 7, "the upper, front, side and rear surfaces" lack proper antecedent basis. In line 7 of claim 7, "said upper panel" lacks proper antecedent basis. In line 3 of claim 8, "said back panel" lacks proper antecedent basis.

### ***Specification***

The disclosure is objected to because it appears that Applicant has provided two different abstracts with one of the abstracts being inappropriate for the instant

application. A first abstract was filed on September 22, 2003. This abstract appears to be appropriate for the instant application. A second abstract was filed on January 2, 2004, and appears to be inappropriate for the instant application. The second abstract is directed to a carousel type display, and includes the apparent attorney docket number 28,409-a. It appears that this is directed to another application for the attorney of record. Clarification is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7, as is best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 102(b) as being anticipated by Cook (3371957). Note that the hollow shell (see any of the figures) is made of resilient fabric (column 1, lines 55-58). Also note the elastic means (d), and rear panel having first and second parts (note at a<sup>2</sup>) disposed in separate planes (note the nearly parallel planes). Note that the first and second parts disposed in separate planes at a mutual angle inherently provides a degree of excess material to relieve forwardly directed stress exerted upon the upper panel when the cushion of the seating assembly is sat upon. These parts inherently contract to smooth the surface of the upper panel when the seating assembly is vacated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 8, as best understood with the above cited indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook (3371957) in view of Riley et al (5722723). Cook shows all claimed features of the instant invention with the exception of a resilient-elongated tube positioned over the excess material. Note the discussion of Cook in the above rejection under 35 U.S.C. 102. Riley et al conventionally teaches providing a resilient-elongated tube (40, as shown in Figures 8 and 9) as positioned over excess material formed by first and second parts (note rear panel of the seat cushion cover 12 in Figure 1). It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding the tube member (40), and positioning it over the excess material formed by the first and second parts. This modification stabilizes the cover of Cook by pressing on the excess material, thereby reducing movement of the cover. This inherently distributes stresses over the surface of the cover, including the width.

***Response to Amendment/Arguments***

Applicant's responses have been fully considered. Applicant has cancelled all originally filed claims, and has added new claims 7 and 8. Applicant's arguments regarding the prior rejections presented in the original office action are now moot in view of the new grounds of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A structural member for insertion into a gap in a seat assembly is shown by each of Dudley (3338630), Takezawa (20020117882), and Robinson (2776705). Reavis (2877832) shows a cover assembly with a seat cushion portion rear panel that has two parts extending in different planes.

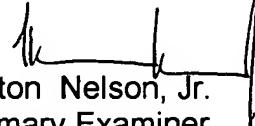
This office action has not been made final since it includes a new grounds of rejection not necessitated by Applicant's amendment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is 7033082117. The examiner can normally be reached on Monday-Wednesday 5:30-3:00, and alternate Fridays 5:30-3:00.

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The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Milton Nelson, Jr.  
Primary Examiner  
Art Unit 3636

mn  
February 2, 2005